FARAD CONTINUATION SHEET NO.

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
APPELLATE SIDE

WRIT PETITION NO.5369 OF 2005

Office Notes, Office Memoranda of Coram, appearances, Court's orders or directions and Registrar's orders	Court's or Judge's orders

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Mr.R.A.Thorat for the petitioner.

Mr.K.B.Sonwalkar for Respondent nos.1 & 2.

Coram : R.S.Mohite,J

Date : 25.11.2005.

PC

1. By this petition the petitioner challenges the order dated 19.7.2005 passed by the IInd Adhoc Additional Dist. Judge, Satara below Exh.36 in R.C.A. No.291/2000. By the impugned Judgment and order by exercising of powers under Order 41 Rule 27 of CPC the appellate Court has allowed the application made by the original plaintiff for adducing the evidence of an additional

witness by name Jaysingh Shelake who is the witness for alleged agreement. The plaintiff has filed his application on the ground that this witness was not available in the village at the time of trial and his whereabouts were not known. This fact was not specifically denied by the defendant. In their reply the original defendant had not specifically contended that this witness was in fact available in the village during the trial. The provisions of Order 41 Rule 27 of CPC permit the leading of additional evidence if the parties seeking to produce additional evidence can establish that notwithstanding the exercise of due diligence, such evidence was not within their knowledge or could not, after the exercise of due diligence, be produced by them, in the trial Court.

2. The application has been

granted because the Court has accepted the case of the plaintiff that evidence was not available. In my view, no interference is called for in the exercise of such discretion. Petition is rejected.

(R.S.Mohite,J)